THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.21481 of 1996

Dated: 23.2.2007

Between:

V.Balachandra

… Petitioner

AND

The Cement Corporation of India Ltd.,
New Delhi
And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.21481 of 1996

ORDER:

The petitioner, feeling aggrieved by denial of promotion to him from post of Accounts Officer to the post of Assistant Manager, filed this writ petition.

The petitioner, who was appointed as clerk in the Postal and Telegraphic Audit Department on 27.1.1967, was later sent to the first respondent Corporation on deputation basis as Accounts Assistant on 25.11.1980. The petitioner was called for interview for the post of Accounts Officer in August 1983. Though some of his juniors were promoted, as he was not given promotion, he filed W.P.No.11653 of 1987 in this regard. This Court after an elaborate consideration, allowed the said writ petition holding that the petitioner is qualified to be considered for promotion to the post of Accounts Officer from the post of Accountant. This Court further declared that the action of respondents 1 to 3 in not promoting the petitioner as Accounts Officer without giving any reasons itself is arbitrary, illegal and violative of Article 14 of the Constitution of India. This Court further held that the petitioner is entitled for promotion on the date on which respondents 4 and 5 were promoted as Accounts Officers with all consequential benefits. Following the said order, the petitioner was promoted with effect from 24.10.1986 and his probation was also declared vide order

dated 9.3.1995. The petitioner thereafter filed contempt case registered as C.C.No.304 of 1994 complaining that though the petitioner was eligible for being considered to the post of Assistant Manager, his case was not considered and the case of respondents 4 and 5 therein who were juniors to him was considered and were promoted. In the light of this submission, the contempt case was disposed of with the following observation and direction:

> " Therefore, I think it is expedient and proper to direct that whenever any post of Assistant Manager arises and the Departmental Promotion Committee considers the same, it is directed to consider the case of the petitioner also, if the petitioner is found suitable for promotion and satisfactorily completed the period of probation and is confirmed in the post of Accounts Officer, he may be given appointment as Assistant Manager with effect from the date of promotion of the respondents 4 and 5, but without financial benefits."

In compliance with the order in contempt case, the petitioner's case was considered by the Departmental Promotional Committee (DPC) in its meeting held on 15.4.1996 and the said Committee did not recommend the case of the petitioner as according to it he was not suitable for the post of Assistant Manager (Finance). This was communicated by the Assistant General Manager (Personal) through his letter dated 24.7.1996. It was also mentioned that the petitioner's case will be put up before the next DPC as and when constituted for determination of suitability for the post of Assistant Manager (Finance). Feeling aggrieved by the denial of promotion to the petitioner, the present writ petition is filed.

Heard Sri Kiran, representing learned counsel for the petitioner. None appeared for the respondents.

Learned counsel for the petitioner submitted that the respondents were not justified in denying promotion to the petitioner while his

juniors, namely, respondents 4 to 6 were promoted as Assistant Managers.

Though none appeared for respondents, a counter affidavit is filed on behalf of the respondents 1 to 3 in which it is asserted that a five member DPC was constituted which considered the case of the petitioner along with various other candidates working through out India for their respective promotions in their branches. It is further stated that the said committee considered 178 executives consisting of 116 E-1 grade and 62 E-2 grade in various disciplines including the petitioner and the said DPC did not find the petitioner and various others suitable for promotion and recommended that their cases may be reviewed in the next meeting of DPC based on their performance. The competent authority, i.e., Chairman and Managing accepted the decision of the said committee.

Having heard the arguments of the learned counsel for the petitioner and on perusing the counter affidavit, I do not see any reason to interfere with the decision taken by the competent authority on the decision of the DPC. The petitioner has no legal right to claim that he shall be promoted, while his legal right is restricted to consideration for promotion only. As directed by this Court in the contempt case, petitioner's case was duly considered by the DPC and it has not recommended for the petitioner's promotion. Nothing is brought out by the petitioner to show that the decision of the DPC is suffering from the vice of arbitrariness or mala fides. Therefore, it is not possible for this Court to grant any relief to the petitioner to promote him contrary to the recommendations of the DPC. At any rate, the DPC while not recommending the case of the petitioner suggested that his case may be placed before the next DPC for further consideration.

In view of the aforementioned reasons, I do not see any reason to

accept the prayer sought for by the petitioner. The writ petition is therefore, dismissed but in the circumstances without costs.

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C.V.NAGARJUNA REDDY,J

Date:23.02.2007
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